

§ 15A-927. Severance of offenses; objection to joinder of defendants for trial.

- (a) Timeliness of Motion; Waiver; Double Jeopardy.
 - (1) A defendant's motion for severance of offenses must be made before trial as provided in G.S. 15A-952, except as provided in G.S. 15A-953, and except that a motion for severance may be made before or at the close of the State's evidence if based upon a ground not previously known. Any right to severance is waived if the motion is not made at the appropriate time.
 - (2) If a defendant's pretrial motion for severance is overruled, he may renew the motion on the same grounds before or at the close of all the evidence. Any right to severance is waived by failure to renew the motion.
 - (3) Unless consented to by the defendant, a motion by the prosecutor for severance of offenses may be granted only prior to trial.
 - (4) If a motion for severance of offenses is granted during the trial, a motion by the defendant for a mistrial must be granted.
- (b) Severance of Offenses. – The court, on motion of the prosecutor or on motion of the defendant, must grant a severance of offenses whenever:
 - (1) If before trial, it is found necessary to promote a fair determination of the defendant's guilt or innocence of each offense; or
 - (2) If during trial, upon motion of the defendant or motion of the prosecutor with the consent of the defendant, it is found necessary to achieve a fair determination of the defendant's guilt or innocence of each offense. The court must consider whether, in view of the number of offenses charged and the complexity of the evidence to be offered, the trier of fact will be able to distinguish the evidence and apply the law intelligently as to each offense.
- (c) Objection to Joinder of Charges against Multiple Defendants for Trial; Severance.
 - (1) When a defendant objects to joinder of charges against two or more defendants for trial because an out-of-court statement of a codefendant makes reference to him but is not admissible against him, the court must require the prosecutor to select one of the following courses:
 - a. A joint trial at which the statement is not admitted into evidence; or
 - b. A joint trial at which the statement is admitted into evidence only after all references to the moving defendant have been effectively deleted so that the statement will not prejudice him; or
 - c. A separate trial of the objecting defendant.
 - (2) The court, on motion of the prosecutor, or on motion of the defendant other than under subdivision (1) above must deny a joinder for trial or grant a severance of defendants whenever:
 - a. If before trial, it is found necessary to protect a defendant's right to a speedy trial, or it is found necessary to promote a fair determination of the guilt or innocence of one or more defendants; or
 - b. If during trial, upon motion of the defendant whose trial is to be severed, or motion of the prosecutor with the consent of the defendant whose trial is to be severed, it is found necessary to achieve a fair determination of the guilt or innocence of that defendant.
 - (3) The court may order the prosecutor to disclose, out of the presence of the jurors, any statements made by the defendants which he intends to introduce in evidence at the trial when that information would assist the court in ruling

on an objection to joinder of defendants for trial or a motion for severance of defendants.

(d) Failure to Prove Grounds for Joinder of Defendants for Trial. – If a defendant moves for severance at the conclusion of the State's case or of all the evidence, and there is not sufficient evidence to support the allegation upon which the moving defendant was joined for trial with the other defendant or defendants, the court must grant a severance if, in view of this lack of evidence, severance is found necessary to achieve a fair determination of that defendant's guilt or innocence.

(e) Severance on Motion of Court. – The court may order a severance of offenses before trial or deny the joinder of defendants for trial if a severance or denial of joinder could be obtained on motion of a defendant or the prosecutor. (1973, c. 1286, s. 1; 1975, c. 166, s. 27.)